

## **PROTECTION OF CLIENTS FROM HARM**

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### PROTECTION OF CLIENTS FROM HARM

The principles discussed in this chapter apply to all Department staff. The specific procedures covered apply particularly to staff of institutions operated by the Department. These include the state mental health institutes, the state hospital-schools, the state training school, the Iowa Juvenile Home, and the Iowa Veterans Home.

Because clients residing in Department institutions are to be cared for, nurtured, educated and treated, institutional employees are charged to protect clients from physical and mental harm. Protection from harm includes protection from the inappropriate conduct of an employee and from child abuse or dependent adult abuse as these are defined in the Code of Iowa. Inappropriate conduct on the part of an employee, child abuse and dependent adult abuse are prohibited.

Employees of the Department must carry out a wide variety of activities to ensure the greatest possible protection for clients. For example, each employee is responsible for preventing or intervening in any situation which may result in either physical or mental harm to a client. Each employee is obligated to follow reporting procedures and to cooperate fully in investigation processes authorized by the Department.

Efforts to prevent occurrence of harm and to ensure that there is no recurrence are the responsibility of the Department of Human Services through its programs, institutional practices, and staff. Efforts to prevent harm include the screening and hiring process, employee training, and ongoing supervision of employees. Efforts to prevent recurrence center around the implementation of corrective action as a result of an authorized investigatory process. These policies and procedures are described in this chapter.

### LEGAL BASIS

Authority for the reporting and investigation of child abuse, for the reporting and evaluation of dependent adult abuse, for the abuse registry, and for the establishment and governing of the institutions under the administration of the Department of Human Services is found in the following:

#### A. Federal Law and Regulations

1. Public Law 93-247, the "Child Abuse Prevention and Treatment Act of 1974."
2. Public Law 98-457, the "Child Abuse Amendments of 1984."
3. 45 CFR 1340, Child Abuse and Neglect Prevention and Treatment.
4. Title XX of the Social Security Act, which became law in January 1975.

PROTECTION OF CLIENTS FROM HARMLEGAL BASIS (Cont.)B. Iowa Code

1. Chapter 217, which establishes the Department of Human Services.
2. Chapter 218, which covers the government of institutions.
3. Chapter 222, which covers the state hospital schools and mentally retarded persons.
4. Chapter 225C, which establishes the Division of Mental Health, Mental Retardation, and Developmental Disabilities.
5. Chapter 226, which covers the state mental health institutes.
6. Chapter 229, which covers hospitalization of mentally ill persons.
7. Chapter 232, Division III, Part 2, which deals with child abuse reporting, investigation and rehabilitation.
8. Chapter 235A, which deals with the child abuse registry.
9. Chapter 235B, which deals with dependent adult abuse reporting and evaluation.
10. Chapter 633, which covers the Iowa Probate Code.
11. Chapter 702, which provides definitions used in the criminal code.
12. Chapter 708, which deals with assault.
13. Chapter 709, which deals with sexual abuse.
14. Chapter 725, which deals with vice.
15. Chapter 726, which deals with protection of the family.
16. Chapter 728, which deals with obscenity.

DEFINITION OF TERMS

Administrative investigator means the person responsible for gathering and assessing information related to reports of abuse or inappropriate conduct for the purpose of allowing corrective action to be taken.

PROTECTION OF CLIENTS FROM HARMDEFINITION OF TERMS (Cont.)

Adult means a person 18 years of age or older.

Appropriate investigation means that investigation reasonably believed by the Department to be warranted by the facts and circumstances of the case as reported. (IAC 441--175.1(235))

Caretaker means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

Child means any person under 18 years of age.

Child abuse means:

- A. Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of acts or omissions of a person responsible for the care of the child.
- B. The commission of any sexual offense with or to a child pursuant to Iowa Code Chapter 709, or Iowa Code Sections 725.1, 726.2, or 728.12 as a result of the acts or omissions of the person responsible for the care of the child.
- C. The denial of critical care.

(Iowa Code 232.68) (See I-J-Appendix for technical definitions of child abuse. For further discussion of child abuse see XIII-D and XIII-D-Appendix.)

Client means a person who receives services in or from one of the facilities of the Department of Human Services.

Confidentiality means that information about clients cannot be given to anyone unless specifically authorized in the Iowa Code or the administrative rules of the Department of Human Services.

Department means the Iowa Department of Human Services and includes the local, district, and central offices of the Department and all of its institutions.

Dependent adult means a person 18 years of age or older who is unable to protect the person's own interests or is unable to adequately perform or obtain the services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another. (IAC 441--176.1(235B))

PROTECTION OF CLIENTS FROM HARMDEFINITION OF TERMS (Cont.)

Dependent adult abuse means:

- A. Any of the following as a result of the willful or negligent acts or omissions of a caretaker:
1. Physical injury to or unreasonable confinement or cruel punishment of a dependent adult.
  2. The commission of any sexual offense pursuant to Chapter 709 or 726.2 of the Code with or to a dependent adult.
  3. Exploitation of a dependent adult, which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit by the use of undue influence, harassment, duress, deception, false representation, false pretenses.
  4. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a dependent adult's life or health.
- B. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

(Iowa Code Sections 235B.1(4) and 235A.13(1)) (See I-J-Appendix for technical definitions of dependent adult abuse. For further discussion of dependent adult abuse, see XIII-D(1) and XIII-D-Appendix.)

Employee means salaried persons who work for the Department whether part-time or full-time, temporary or emergency; persons under contract with the Department; persons working for the contractor; and volunteers, whether paid or not.

Founded means a preponderance of evidence shows that abuse has occurred. Founded reports of abuse are maintained on the Central Abuse Registry for at least ten years.

Guardian means the person, agency, or court appointed to have jurisdiction and custody over a person.

Harm means physical pain, injury, psychological or emotional trauma, or inhumane treatment.

PROTECTION OF CLIENTS FROM HARMDEFINITION OF TERMS (Cont.)

Health practitioner includes any licensed physician or surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatrist or chiropractor; a resident or intern in any of these professions; and any registered nurse or licensed practical nurse. (Iowa Code Section 232.68(4))

Inappropriate conduct means the omission or commission of any act by an employee which violates Department or Division policy as it relates to protecting clients from harm, including, but not limited to, child abuse or dependent adult abuse. Inappropriate conduct does not include:

- A. Those physical or verbal acts, including emergency restraint, minimally necessary to implement the facility's approved policies related to client control measures;
- B. Physical prompting and definitive verbal instructions which are a part of the treatment and are indicated by the client's written record; and
- C. Use of physical restraints or seclusion which are indicated by the client's written record or emergency circumstances.

Institution refers to the facility and grounds administered by the Department of Human Services.

Mandatory child abuse reporter means a person who is required to report suspected cases of child abuse to the Central Abuse Registry within 24 hours. Mandatory child abuse reporters include:

- A. Every health practitioner who examines, attends, or treats a child and who reasonably believes the child has been abused.
- B. Every one of the following who, in the course of employment or in providing child foster care, examines, attends, counsels, or treats a child and reasonably believes the child has suffered abuse:
  - 1. Self-employed social worker,
  - 2. Social worker under the jurisdiction of the Department of Human Services,
  - 3. Social worker employed by a public or private agency or institution, or public or private health care facility,
  - 4. Certified psychologist,
  - 5. Certificated school employee,

PROTECTION OF CLIENTS FROM HARMDEFINITION OF TERMS (Cont.)

6. Employee or operator of a licensed child care center or registered group day-care home or registered family day-care home,
7. Individual licensee under Iowa Code Chapter 237,
8. Member of the staff of a mental health center,
9. Peace officer,
10. Dental hygienist,
11. Counselor,
12. Paramedic, or
13. Mental health professional. (Iowa Code Section 232.69)

Mandatory dependent adult abuse reporter means a person who is required to report suspected cases of dependent adult abuse to the Central Abuse Registry within 24 hours. Mandatory dependent adult abuse reporters include:

- A. Every health practitioner who examines, attends, or treats a dependent adult and who reasonably believes the dependent adult has been abused.
- B. Every one of the following who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has been abused:
  1. Social worker under the jurisdiction of the Department of Human Services,
  2. Self-employed social worker,
  3. Social worker employed by a public or private agency or institution, or by a public or private health care facility,
  4. Certified psychologist,
  5. Member of the staff of a mental health center,
  6. Member of the staff of a hospital,
  7. Member of the staff or employee of a public or private health care facility, or
  8. Peace officer.



PROTECTION OF CLIENTS FROM HARMDEFINITION OF TERMS (Cont.)

- C. An in-home homemaker-home health aide or a person employed as an outreach person who reasonably believes the dependent adult has been abused. (Iowa Code Section 235B.1(7))

Person responsible for the care of a child means:

- A. A parent, guardian, or foster parent.
- B. A relative or any other person with whom the child resides.
- C. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility. (Iowa Code Section 232.68(6))

Physical injury means damage to bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue which results in the death of the person who has sustained the damage. (IAC 441--175.1(235A))

Preponderance of evidence means evidence which is greater or more convincing than evidence which is offered in opposition to it. (IAC 441--175.1(235A))

Probable cause means circumstances which would lead a person of reasonable caution to believe that a person committed an act.

Proper supervision means the supervision which a reasonable and prudent person would exercise under similar facts and circumstances. (IAC 441--175.1(235A))

Registry means the central registry for child and dependent adult abuse information, located in the Bureau of Adult, Children, and Family Services of the Department.

Report means a verbal or written statement which alleges that abuse has occurred.

Reporter means any person who makes a referral of suspected abuse or inappropriate conduct.

Statutory investigator refers to the person responsible for gathering and assessing information related to reports of child abuse or dependent adult abuse for the purpose of determining whether or not the alleged abuse occurred.

PROTECTION OF CLIENTS FROM HARMDEFINITION OF TERMS (Cont.)

Suspicion means a person is believed to be guilty when there is slight evidence or there is no supporting evidence.

SCREENING EMPLOYEES**Policy**

A criminal and child abuse record check shall be made on all new employees of Department institutions except for the following:

- A. Volunteers. Registered volunteers whose volunteer activity is part of a group activity or whose activity is one-time or infrequent and done in the presence of other staff or volunteers are exempted from the checks.
- B. Contractors. Contractors, or their employees, who do not work directly with clients or whose client contact is done in the presence of employees are exempt from the checks.

**Comment**

State law requires checks of anyone involved in direct responsibility for residents or who could have access to a resident when the resident is alone. The decision to include all employees, other than the exceptions stated, is because of the last condition, access when alone with the resident. Every employee has the opportunity to be alone with a client either incidentally or by design. Employees also change jobs after initial employment and may change their relationships to residents.

The institution can use some discretion in requiring checks on volunteers. Checks need to be done on volunteers who volunteer on a regular basis and in the process of that activity are alone with the client.

Records check laws are applicable to a broad range of public and private institutions and facilities. The primary focus is on checking staff who will be working with children. However, the portion of the law that pertains specifically to the Department's institutions applies to residents of the institution and a resident is defined as "a person committed or admitted to an institution." The law covers staff working with residents of all ages.

The law also covers a person who "will reside in a facility utilized by an institution." Since employees are already required to be checked, this provision applies to nonemployees. "Utilized by an institution" is defined to

PROTECTION OF CLIENTS FROM HARMSCREENING EMPLOYEES (Cont.)

mean any facility used by the institution for client activity. This excludes most rental housing on an institution's grounds. This could create a problem for employee lodges if space is rented to nonemployees and the building is also used for client activities.

**Legal reference:** Iowa Code Section 218.13 (1991 Supplement)

**Procedure**

The Department of Personnel requires that records be maintained on employee background checks. Each institution shall maintain the following information to have available to submit to the Department of Personnel upon request:

- A. The total number of applicants for each job class who were eligible for a background check.
- B. A list of all applicants for whom background checks were conducted, by organizational unit (institution name), employee name, social security number, type of background check, and result (pass or fail).

**Pre-Employment Check****Policy**

A new employee shall not be placed on an institution's payroll until the required criminal and child abuse record checks have been initiated.

A person shall be offered employment before completion of the records check only if the person fully completes and signs form 470-2939, Criminal Conviction, Founded Child/Dependent Adult Abuse Representation Statement.

**Comment**

The goal is to have the record check completed before the start of employment, but that may not be possible in all cases. Start the check as soon as the person is being considered for employment, such as when interviews for a position are being set up or after a preliminary screening interview indicates that the person will be given consideration for employment.

PROTECTION OF CLIENTS FROM HARMSCREENING EMPLOYEES (Cont.)Pre-Employment Check (Cont.)**Comment** (Cont.)

Limit checks to Iowa records, unless the institution hires a significant number of employees who live in another state. If so, try to implement criminal and child abuse record checks in that state. An institution may also elect in individual cases to do record checks in other states.

Waiting for a completion of the records check may cause problems in filling a position on a timely basis. Use of form 470-2939 preserves the right to take any necessary action needed as a result of the findings of the evaluation.

**Legal reference:** Iowa Code Section 218.13, Subsection 2 (1991 Supplement)

**Procedure**

To initiate a child abuse registry check, submit form SS-1606, Request for Child Abuse Information, to the central registry in the Division of Adult, Children and Family Services.

To initiate a criminal record check, submit form 595-1396, Request For Non-Law Enforcement Record Check, directly to the DCI. Criminal record checks cannot be done through local law enforcement agencies.

Record Found**Policy**

When a record check determines that a potential employee or resident has been convicted of a crime or has a record of a founded child abuse, the institution shall request that an evaluation be made to determine whether prohibition of the person's employment or residence is warranted.

When the record check is completed before the initial hire or residence of the person, and an evaluation is required, the person's hire or residence shall be delayed until the results of the evaluation are available.

**Comment**

A "crime" is defined as all civil and criminal convictions including OWI. Convictions for motor vehicle violations are not included.

A record of a criminal conviction or founded child abuse does not automatically exclude a person from employment by a Department institution.

PROTECTION OF CLIENTS FROM HARMSCREENING EMPLOYEES (Cont.)Record Found (Cont.)Comment (Cont.)

**Legal reference:** Iowa Code Section 218.13, Subsections 3 and 4 (1991 Supplement)

**Procedure**

Provide the prospective employee or resident with a copy of form 470-2310, Record Check Evaluation, for completion. Evaluate the circumstances to determine whether they warrant denying employment or discharge. Consider the type of conviction, circumstances of the abuse, elapsed time since the conviction or abuse, evidence of rehabilitation, the number or reports, and the relationship to the type of position the person would occupy. Submit the completed form to the Chief of the Bureau of Program Support Services in the Division of Adult, Children and Family Services.

Employment or Residence Prohibited**Policy**

If the evaluation determines that person has committed a crime or has a record of founded child abuse which warrants prohibition of employment or residence, the institution shall not employ the person or permit the person to reside in a facility used by the institution.

**Comment**

**Legal reference:** Iowa Code Section 218.13, Subsection 5 (1991 Supplement)

Added Conditions of Employment or Residence**Policy**

The institution may permit a person who is evaluated to be employed or reside or to continue employment or residence if the person complies with the Department's conditions relating to employment or residence which may include completion of additional training.

PROTECTION OF CLIENTS FROM HARMSCREENING EMPLOYEES (Cont.)Record Found (Cont.)Added Conditions of Employment or Residence (Cont.)**Comment**

When a person has been evaluated, the institution may as a condition of employment or residence, require additional training or establish special conditions of employment. Any training or conditions of employment so required must relate directly to the job residence of the person.

Evaluation Appeal**Policy**

A person who has been denied employment or residence as the result of an evaluation may appeal the decision to the Department using the process in I-E, "Appeals and Hearings."

**Comment**

The person can request appeal papers from any Department office or may send a letter requesting an appeal to the Director, Iowa Department of Human Services.

**Legal reference:** 441 IAC 7.5(217)

Dependent Adult Abuse Checks**Policy**

The Department's institutions shall conduct a record check for dependent adult abuse on all new employees or residents.

**Comment**

The Department will continue to do dependent adult abuse checks, but they cannot be initiated until after the person starts employment.

Use the same procedure as for child abuse checks, except initiate the check after employment.

PROTECTION OF CLIENTS FROM HARM

INFORMING AND TRAINING EMPLOYEES

**Policy**

Before any contact with a client and annually thereafter, each employee shall be informed of the policies and procedures for reporting suspected abuse and inappropriate employee conduct.

**Comment**

The superintendent or designee is responsible for ensuring that the policies and procedures related to employee conduct with clients are explained to the employee before contact with a client.

**Legal reference:** Iowa Code Sections 232.69 and 235B.2

PROTECTION OF CLIENTS FROM HARMINFORMING AND TRAINING EMPLOYEES (Cont.)**Procedure**

The superintendent or designee shall establish a process that shall ensure that the employees read this chapter and are afforded an opportunity to discuss questions and concerns related to this chapter.

At the time of hire, before any client contact is permitted, the employee shall read and sign form 470-2340, Memorandum of Understanding Regarding Employee-Client Interaction. The original shall be placed in the employee's personnel file, and a copy shall be given to the employee.

At a minimum of every 12 months, every employee shall be reminded of the policies and procedures developed to safeguard clients.

**Employee-Client Relations****Policy**

The Department shall provide ongoing training in behavior management methods, with regular attention paid to the policies and procedures related to abuse and interactions between employees and clients. Failure to attend and participate in training sessions without good cause is considered inappropriate conduct and is grounds for disciplinary action.

**Comment**

Training needs related to this chapter shall be assessed annually. Based on information gathered through the reporting and investigation process, a training curriculum shall be developed. The division administrator responsible for the institution or designee shall review, revise, and approve proposed training materials. Approved training shall be presented to employees.

Continuous and regular preservice and in-service training shall include supervisory and management training for staff in supervisory positions and training for personnel who are in day-to-day contact with clients.

**Mandatory Child Abuse and Dependent Adult Abuse Reporters****Policy**

The superintendent or designee of each institution shall identify all employees who are mandatory child abuse or dependent adult abuse reporters according to the definition in this chapter. Each person identified shall be notified of the person's status as a mandatory child abuse or dependent adult abuse reporter prior to having contact with any client.



PROTECTION OF CLIENTS FROM HARMINFORMING AND TRAINING EMPLOYEES (Cont.)Mandatory Child Abuse and Dependent Adult Abuse Reporters (Cont.)**Comment**

A person in a position identified as a mandatory child abuse or dependent adult abuse reporter who learns of suspected child abuse or dependent adult abuse other than through treating, attending, or counseling the child or dependent adult is not considered a mandatory reporter in relation to that child or dependent adult. See DEFINITION OF TERMS: Mandatory Child Abuse Reporter and Mandatory Dependent Adult Abuse Reporter. The term "social worker" in this definition includes employees who have an Iowa Department of Personnel classification of social worker or income maintenance worker, and those who have a college degree in social work.

Training for Mandatory Reporters**Policy**

Mandatory child abuse reporters and mandatory dependent adult abuse reporters shall participate in a minimum of two hours of training within six months of initial employment and every five years thereafter. Training shall cover identification and reporting procedures related to child abuse and dependent adult abuse.

**Comment**

**Legal reference:** Iowa Code Sections 232.69(3) and 235B.2(5)

Individual Treatment Plans**Policy**

Each institution shall develop and implement, within 30 days of admission, a specific individualized treatment plan for every client to meet the client's physical, emotional and developmental needs. Failure to develop and implement a treatment plan is considered inappropriate conduct and is grounds for disciplinary action.

**Comment**

The overall purpose of the individual treatment plan is to help the client function at the greatest physical, intellectual, social, or vocational level that the client can presently or potentially achieve. Clients have a constitutional right to treatment. Inaccurate reporting, failure to report, falsification of records, or implementation of programs without

PROTECTION OF CLIENTS FROM HARMINFORMING AND TRAINING EMPLOYEES (Cont.)Individual Treatment Plans (Cont.)**Comment** (Cont.)

close attention to the individual treatment plan constitutes inappropriate conduct.

**Legal reference:** IAC 441--22.4(225C); Iowa Code Sections 232.52 and 232.102

REPORTING**Policy**

Mandatory child abuse reporters are required by state law to report suspected abuse to the Department of Human Services both orally and in writing. Any incident which a mandatory child abuse reporter reasonably believes to be child abuse shall be orally reported to the Registry immediately. The written report shall be made within 48 hours of the oral report.

Mandatory dependent adult abuse reporters are required by state law to report suspected abuse to the Department of Human Services both orally and in writing. Any incident which a mandatory dependent adult abuse reporter reasonably believes to be dependent adult abuse shall be orally reported immediately to the person in charge of the institution, agency, or facility, or the person's designated agent, and that person shall make the report within 24 hours of the incident. The written report shall be made within 48 hours of the oral report.

Any employee witnessing or having knowledge of any act believed to be abuse or inappropriate conduct on the part of an employee is required to report the incident immediately to the superintendent or designee.

All acts or omissions which cause or could cause harm to a client shall be reported. This includes unacceptable employee actions which may not fall within the legal definitions of child abuse or dependent adult abuse, as well as child abuse and dependent adult abuse as defined in the Iowa Code.

**Comment**

All employees are obligated to report any act which is suspicious. It is not the employee's responsibility to investigate or prove whether a client has been abused or treated inappropriately. If there is any question that abuse or inappropriate conduct may have occurred, the incident shall be reported.

PROTECTION OF CLIENTS FROM HARM**REPORTING** (Cont.)**Comment** (Cont.)

In addition, some staff are mandatory abuse reporters, which places additional reporting responsibilities on them.

**Legal reference:** Iowa Code Sections 232.69 and 235B.1

**Procedure**

Each institution shall ensure that procedures for reporting abuse and inappropriate conduct are carried out by all employees.

Using these procedures as a guideline, each institution shall develop reporting procedures applicable to its organizational structure. All reporting procedures must be approved by the division administrator who has oversight responsibility for the institution.

A. Any employee who observes a client with an injury of known or unknown origin shall:

1. Intervene immediately to protect the client, if needed.
2. Provide first aid and obtain medical attention, if appropriate.
3. Verbally report the injury to the immediate supervisor as soon as possible and no later than one hour after observing the injury. If the supervisor is unavailable, report to designated authority.
4. If the employee is a mandatory reporter and the injury is believed to be a result of abuse, verbally report the injury to the Central Registry if the client is a child, or verbally report the injury of dependent adult to the person in charge of the institution, or the person's designated agent, immediately.

Information provided shall include the client's name, age and location; the nature and extent of the condition; the action taken by employee; and any other information which may be helpful.

B. Any health practitioner who examines or treats a client with an injury of known or unknown origin shall:

1. Determine the level of injury.
2. If a child is involved, report to the Central Abuse Registry any injury believed to be the result of child abuse and notify the person in charge of the institution, or the person's designated agent.

PROTECTION OF CLIENTS FROM HARM**REPORTING** (Cont.)**Procedure** (Cont.)

3. If a dependent adult is involved, report to the person in charge of the institution, or the person's designated agent, any injury believed to be the result of dependent adult abuse.
- C. In the case of admission of a client to facility's medical unit or an outside medical facility, or in the case of founded abuse, the superintendent shall:
1. Notify the division administrator or designee who has oversight responsibility for the institution.
  2. Ensure that the parents, guardian, or other person designated for notification in case of an emergency are apprised of the situation within 12 hours.

**Sanctions for Failure to Report****Policy**

When an employee observes or has knowledge of an incident of suspected abuse or inappropriate conduct on the part of any employee which is later substantiated and fails to report the incident as required by this chapter, the employee shall be considered as having contributed to the incident.

**Comment**

All employees have an obligation to protect clients. Failure to take action to protect a client is interpreted as having committed abuse or inappropriate conduct. Disciplinary action up to and including dismissal may result.

**Legal Sanctions for Mandatory Abuse Reporters****Policy**

Any mandatory child abuse or dependent adult abuse reporter who knowingly and willfully fails to report an incident the reporter reasonably believes to be child abuse or dependent adult abuse can be found guilty of a simple misdemeanor and be found civilly liable for any damages connected to the failure to report.

PROTECTION OF CLIENTS FROM HARMREPORTING (Cont.)Legal Sanctions for Mandatory Abuse Reporters (Cont.)**Comment**

All reports of suspected child abuse and dependent adult abuse shall be reviewed by the institution staff appointed by the superintendent to ensure that mandatory child abuse and dependent adult abuse reporters meet their obligation to report.

**Legal reference:** Iowa Code Sections 232.75 and 235B.1(11)

Liability Protection for Reporters**Policy**

Anyone making a report of suspected abuse or cooperating or assisting in the evaluation of a report of abuse in good faith is immune from civil or criminal liability which might otherwise be incurred or imposed.

**Comment**

Employees cannot be legally prosecuted or terminated from employment for reporting what they believe to be true.

**Legal reference:** Iowa Code Sections 232.73 and 235B.1(7)

Protection from Harassment**Policy**

Employees who report or assist in an investigation of suspected abuse or inappropriate employee conduct which has been authorized by the Department of Human Services shall not be harassed or intimidated by other staff.

**Comment**

Employees should be able to report incidents without fear of reprisal. The institution has a responsibility to prevent and stop harassment and to provide reasonable protection to employees who are the victims of harassment.

**Procedure**

Harassment will not be tolerated. Any employee found to be harassing another employee shall be subject to disciplinary action.

PROTECTION OF CLIENTS FROM HARMINVESTIGATION**Policy**

When a report of abuse or inappropriate employee conduct is received, the Department shall promptly commence an appropriate investigation.

When an incident is reported in an institution, an appropriate investigation shall include an initial investigation and an administrative investigation, and may include a statutory investigation. The primary purposes of these investigations shall be:

- A. To provide for the immediate protection of the client,
- B. To compile information necessary to complete required reports, and
- C. To enable appropriate corrective action to be taken.

**Comment**

The initial investigation shall be aimed at protection of the client, preserving physical evidence, and collecting reports from employees. An administrative investigator shall be contacted to conduct a more in-depth investigation. Information obtained through the initial investigation and the work of the administrative investigator will be used for corrective action, personnel action, and, if appropriate, will be forwarded to the county attorney for criminal action.

The Department of Inspections and Appeals also investigates allegations of abuse. Information collected by the Department of Inspections and Appeals is used to complete abuse reports required by statute.

**Legal reference:** Iowa Code Section 232.7(1) and 235B.1(7)

**Procedure****A. Initial Investigative Procedures**

The person conducting the initial investigation shall:

1. Secure any physical evidence.
2. Obtain written or taped reports from all employees who may have been in the area at the time of the alleged incident.

**B. Administrative Investigative Procedures**

The administrative investigator shall:

PROTECTION OF CLIENTS FROM HARMINVESTIGATION (Cont.)**Procedure** (Cont.)B. Administrative Investigative Procedures (Cont.)

1. Interview the client, as appropriate.
2. Reinterview the employees, as needed.
  - a. Inform the employees of the nature of the investigation.
  - b. Ensure union representation.
3. Recommend or enlist the aid of the local law enforcement agency, when a criminal act is suspected.
4. Complete a written report describing the findings of the investigation. If the allegations are founded, the report shall contain recommendations for action to be taken.

The report shall be sent to:

- a. The division administrator who has oversight responsibility for the institution.
- b. The superintendent of the institution.

If criminal charges may be filed, the report shall also be sent to the county attorney's office. The superintendent shall decide within 72 hours of receipt of the report whether to involve the county attorney.

C. Statutory Investigative Procedures

The Department of Inspections and Appeals is responsible for investigating alleged abuse in all institutions administered by the Department of Human Services. This is a statutory responsibility for the institutions which are licensed by the Department of Inspections and Appeals. For the juvenile institutions, the Department of Inspections and Appeals is under contract to do the investigations.

For more information on statutory investigative procedures, see XVI-E and XIII-D(1). All information collected is confidential and cannot be used for personnel management.

PROTECTION OF CLIENTS FROM HARMINVESTIGATION (Cont.)**Comment**

The administrative investigation shall include a determination of the seriousness of any injury suffered by a client. The degree of injury is determined by the skill needed by the person providing treatment, as follows:

1. Level 1 injury means an injury that does not require treatment by a registered nurse or licensed practical nurse.
2. Level 2 injury means an injury that requires treatment by a registered nurse or licensed practical nurse.
3. Level 3 injury means an injury that requires treatment by a licensed physician.
4. Level 4 injury means an injury that requires admission to the facility's medical center.
5. Level 5 injury means an injury that requires treatment or admission to an outside medical facility.

(A facility's internal policy regarding provision of treatment by specific Iowa Department of Personnel classifications does not affect the skill level needed by the person providing treatment.)

An employee's right to union representation any time the employee has reason to believe that discipline could occur was established in the Winegarten case.

CORRECTIVE ACTION**Policy**

Each institution shall analyze all investigative findings to identify problems which contributed to each incident. The institution shall develop a plan of corrective action in response to each founded report of abuse or inappropriate conduct.

**Comment**

A corrective strategy may not be limited to disciplinary action addressing a specific incident. To correct those situations which have led to abuse or inappropriate employee conduct, attention must focus on broad and fundamental issues in addition to immediate efforts directed to a specific situation.



PROTECTION OF CLIENTS FROM HARMCORRECTIVE ACTION (Cont.)**Procedure**

Every corrective action plan developed as a result of a founded incident should evaluate and address if appropriate the following areas:

- A. Policies of the institution which affect how clients are managed,
- B. Administrative practices and procedures which may have allowed or contributed to the incident, including quality and experience of all levels of staff; and
- C. Operational practices and procedures specifically relating to screening and selection of staff, annual performance reviews, and training.

A quarterly progress report addressing action taken on corrective action recommendations shall be submitted to the division administrator who has oversight responsibility for the institution.

**Personnel Actions****Policy**

Any employee who contributes to a founded reportable incident shall be subject to a range of personnel actions up to and including dismissal. Disciplinary action shall be taken without regard to any legal sanctions that occur as a result of civil or criminal prosecution. Prior work history shall be a factor only as it relates to a history of a previously founded involvement in abuse or inappropriate conduct. All personnel actions shall be timely.

**Procedure**

The initial personnel action taken by the superintendent or designee shall be based on the administrative investigator's report and shall be taken within one working day of report of the incident. The superintendent and the supervisor shall also take personnel action at the conclusion of the investigatory process. This action shall be taken with 10 working days of the initial report of the incident.

The reportable actions have been categorized on the basis of the legal definitions of child abuse and dependent adult abuse and the seriousness of the possible harm to the client.

The action that shall be taken varies depending on two factors:

1. The degree of evidence, that is whether:

PROTECTION OF CLIENTS FROM HARMCORRECTIVE ACTION (Cont.)Personnel Actions (Cont.)Procedure (Cont.)

- a. The activities of an employee provide grounds for suspicion, or
  - b. The Department feels it has probable cause for believing that the employee was involved, or
  - c. The incident has been supported by a preponderance of evidence.
2. The degree of harm.
- a. Class A reportable incident means any act that a person of ordinary prudence would not have done under similar circumstances, or the failure to do something that a person of ordinary prudence would have done under similar circumstances.
  - b. Class B reportable incident means any act, failure to act, or incitement of another to act, which is done knowingly, intentionally, or negligently, and which caused or may have caused harm to the client (level 1 injury). Exploitation of a client is a Class B reportable incident.
  - c. Class C reportable incident means any act, failure to act or incitement of another to act, which is done knowingly, intentionally, or negligently, and which caused or may have caused serious harm to the client (levels of injury 2, 3, 4, or 5).

Within each category of reportable incidence and degree of evidence available, a range of personnel actions may take place. The personnel action shall be consistent and appropriate to the situation causing client harm. See the following chart.

RANGE OF PERSONNEL ACTIONS

Category of Incident	Degree of Evidence	Indicated Personnel Action
C	Suspicion	<ul style="list-style-type: none"><li>• Verbal clarification</li><li>• Increase in supervision</li></ul>

PROTECTION OF CLIENTS FROM HARMCORRECTIVE ACTION (Cont.)Personnel Actions (Cont.)Procedure (Cont.)RANGE OF PERSONNEL ACTIONS

Category of Incident	Degree of Evidence	Indicated Personnel Action
C	Probable cause	<ul style="list-style-type: none"> <li>• Suspension with pay for up to 5 working days*</li> </ul>
	Preponderance	<ul style="list-style-type: none"> <li>• First violation: Dismissal</li> </ul>
B	Suspicion	<ul style="list-style-type: none"> <li>• Verbal clarification</li> <li>• Increase in supervision</li> </ul>
	Probable cause	<ul style="list-style-type: none"> <li>• Move to another residence, or</li> <li>• Reassignment to job without resident contact,** or</li> <li>• Suspension with pay for up to 5 working days*</li> </ul>
	Preponderance	<ul style="list-style-type: none"> <li>• First violation: <ul style="list-style-type: none"> <li>- Suspension without pay for up to 15 working days, counseling provided; or</li> <li>- Reassignment to job without resident contact,** counseling provided; or</li> <li>- Demotion, counseling provided.</li> </ul> </li> <li>• Second violation: Dismissal</li> </ul>
A	Suspicion	<ul style="list-style-type: none"> <li>• Verbal clarification</li> </ul>
	Probable cause	<ul style="list-style-type: none"> <li>• Increase in supervision, or</li> <li>• Reassignment to job without resident contact**</li> </ul>

PROTECTION OF CLIENTS FROM HARMCORRECTIVE ACTION (Cont.)Personnel Actions (Cont.)Procedure (Cont.)

Category of Incident	Degree of Evidence	Indicated Personnel Action
A	Preponderance	<ul style="list-style-type: none"><li>• First violation:<ul style="list-style-type: none"><li>- Written reprimand, counseling provided; or</li><li>- Suspension without pay for up to 15 working days, counseling provided; or</li><li>- Reassignment to job without resident contact,** counseling provided; or</li><li>- Dismissal.</li></ul></li><li>• Second violation:<ul style="list-style-type: none"><li>- Suspension without pay for up to 15 working days, counseling provided; or</li><li>- Demotion, counseling provided; or</li><li>- Dismissal.</li></ul></li><li>• Third violation:<ul style="list-style-type: none"><li>- Dismissal</li></ul></li></ul>

\*Suspension with pay is allowable during the investigatory period.

\*\*For an employee to be reassigned, another position must be available and appropriate to the employee's qualifications.